

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY - CIVIL DIVISION

DOCKET NO. 02389

\*\*\*\*\*

GEOFFREY CROWTHER,

Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION

and CSX TRANSPORTATION, INC.,

Defendants.

\*\*\*\*\*

DEPOSITION OF ANDREW P. LEHMAN, M.D.

New England Orthopedic Surgeons

300 Birnie Avenue

Springfield, Massachusetts

December 15, 2008      4:20 p.m.

Jonathan P. Lodi

Court Reporter

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 2</p> <p>APPEARANCES:</p> <p>Representing the Plaintiff: LAW OFFICE OF THOMAS J. JOYCE, III 900 Centerton Road Mount Laurel, New Jersey 08054 By: Thomas J. Joyce, III, Esq. 856.914.0220</p> <p>Representing the Defendants: BURNS, WHITE &amp; HICKTON, LLC Four Northshore Center 106 Isabella Street Pittsburgh, PA 15212 By: Stephen A. Hall, Esq. 412.995.3000</p>	<p style="text-align: right;">Page 4</p> <p>ANDREW P. LEHMAN, M.D., Deponent, having first been duly sworn, deposes and states as follows: (Lehman Deposition Exhibits 1 - 5: Marked for identification.) EXAMINATION <b>Q. (By Mr. Hall) Good afternoon, Doctor. My name is Stephen Hall, and I represent the Railroad in a piece of litigation involving one of your former patients, Geoffrey Crowther. And before we began, we talked a little bit about the exhibits, and I just want to make sure that we go through them on the record, quickly.</b> <b>Exhibit 1 is marked as the notice of deposition, which has got the legalese, but asking for -- I'm not sure if you saw this or not -- but it was sent to Mr. Joyce, care of -- to you -- care of Mr. Joyce, but it asked that you bring the whole file relating to Mr. Crowther. And it's my understanding that Exhibits 3 and 4 constitute the records that relate to your treatment, is that correct?</b> A. Yes, as far as I know. I didn't see the -- <b>Q. Sure. And you're more than welcome to</b></p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS: ANDREW P. LEHMAN, M.D. EXAMINATION BY: PAGE: Mr. Hall 4 Mr. Joyce 63</p> <p>EXHIBITS: PAGE: 1 Notice of deposition 4 2 Dr. Lehman's report and CV 4 3 Medical records pertaining to Mr. Crowther 4 4 Further medical records pertaining to Mr. Crowther 4 5 Letter dated 4/11/08 from Mr. Joyce to Dr. Lehman 4</p>	<p style="text-align: right;">Page 5</p> <p><b>take a look through those. You gave me a --</b> A. Yes. These are the -- this is pretty redundant. This has got -- this stuff has got that in there, but -- <b>Q. Okay. There was some additional material in --</b> A. This is -- <b>Q. And Exhibit 4 is what you reviewed in advance of the deposition?</b> A. Yes. <b>Q. And Exhibit 2 is your report that you were asked to draft in this case and a copy of your CV, is that correct?</b> A. Yes. And that is also in 4, as well; My CV, not; but the report is. <b>Q. I just want to make sure. Is that a true and accurate copy?</b> A. It appears to be. <b>Q. Okay. And you signed that?</b> A. Yes. This is an older CV. This is not quite accurate. <b>Q. Okay. We can append it afterwards.</b> A. Okay. <b>Q. Is there anything -- as you're looking</b></p>

<p style="text-align: right;">Page 6</p> <p>1 <b>at it, is there anything that pops out, in your</b>  2 <b>mind, that's significant, in terms of what --</b>  3 A. Well, I would just -- my e-mail  4 address, home address and phone number are all  5 different. And I am no longer licensed in New  6 York and Illinois, so I don't work there. I have  7 also passed Part II of the exam, of the American  8 boards, so --  9 <b>Q. All right. And Exhibit 5 is a copy of</b>  10 <b>a letter dated April 11th, from the Law Office of</b>  11 <b>Tom Joyce. And is this the letter that you</b>  12 <b>received from Attorney Joyce, asking for the</b>  13 <b>narrative report?</b>  14 A. Yes. It appears to be, yes.  15 <b>Q. And, Doctor, can you tell me the</b>  16 <b>states in which you're licensed to practice</b>  17 <b>medicine?</b>  18 A. Massachusetts.  19 <b>Q. And have you had any discipline or</b>  20 <b>anything like that, in terms of your license in</b>  21 <b>Massachusetts?</b>  22 A. No.  23 <b>Q. And can you quickly go through your</b>  24 <b>educational background, please?</b></p>	<p style="text-align: right;">Page 8</p> <p><b>certification?</b>  A. Orthopedic surgery.  <b>Q. And, I'm sorry, when did you complete</b>  <b>the boards?</b>  A. Step I, I believe, was in 2003. Part  II was following twenty-six months of practice,  which was in August of 2006.  <b>Q. And have you conducted any research?</b>  A. We do have a database here, at New  England Orthopedics, where we do clinical  research.  <b>Q. Have you done any research in the area</b>  <b>of repetitive stress injuries?</b>  A. No.  <b>Q. Cumulative trauma disorders?</b>  A. No.  <b>Q. Or anything involving railroad work?</b>  A. No.  <b>Q. Have you published any findings with</b>  <b>regard to the cause of degenerative conditions in</b>  <b>the hip or knees?</b>  A. No.  <b>Q. And have you ever been deposed before,</b>  <b>sir?</b></p>
<p style="text-align: right;">Page 7</p> <p>1 A. I went to medical school in  2 Philadelphia, at Jefferson Medical College;  3 graduated there in '98, with honors. I  4 subsequently did my surgical internship at the  5 University of Illinois at Chicago, for one year;  6 and then, my orthopedic residency at the  7 University of Illinois at Chicago, from 1999, to  8 2003; after which I did a subspecialty fellowship  9 in hip and knee reconstruction at the Hospital for  10 Special Surgery, in New York, which I completed in  11 August of 2004. And I've been here, at New  12 England Orthopedics, for the last four years and  13 three months, four years and four months I guess.  14 <b>Q. And your specialty here is knees?</b>  15 A. Hip and knee reconstruction.  16 <b>Q. Hip and knee? Okay.</b>  17 A. I do that exclusively.  18 <b>Q. And I apologize. Are you board</b>  19 <b>certified?</b>  20 A. Yes.  21 <b>Q. And in which -- in hip and knee or --</b>  22 A. There is no --  23 (Multiple speakers.)  24 <b>Q. (By Mr. Hall) What's your board</b></p>	<p style="text-align: right;">Page 9</p> <p>A. Yes.  <b>Q. Okay. And was that in relationship to</b>  <b>lawsuits involving your patients or former</b>  <b>patients?</b>  A. Yes.  <b>Q. And have you ever served as an expert</b>  <b>witness before?</b>  A. No.  <b>Q. So this is your first time being an</b>  <b>expert?</b>  A. It is. First time being deposed as an  expert witness, yes.  <b>Q. And what type of cases were you</b>  <b>involved in before, where you were deposed?</b>  A. Hip and knee reconstructive cases.  <b>Q. And were those personal injury</b>  <b>lawsuits?</b>  A. It was one time. And yes.  <b>Q. And what court was that in; do you</b>  <b>know?</b>  A. It was in New York. I don't remember  which one.  <b>Q. And were the other cases Workers'</b>  <b>Compensation cases or --</b></p>

<p style="text-align: right;">Page 10</p> <p>1 A. Personal injury.</p> <p>2 <b>Q. Okay. And, I'm sorry, how many times</b></p> <p>3 <b>do you think you've been deposed?</b></p> <p>4 A. Once.</p> <p>5 <b>Q. Okay. One time. And have you been</b></p> <p>6 <b>involved in any Workers' Compensation cases?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And how many Workers' Compensation</b></p> <p>9 <b>cases have you been involved with?</b></p> <p>10 A. I don't know. A lot. Dozens.</p> <p>11 <b>Q. And have you ever been a party to a</b></p> <p>12 <b>lawsuit; have you ever been a plaintiff or a</b></p> <p>13 <b>defendant yourself?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And which one?</b></p> <p>16 A. Defendant.</p> <p>17 <b>Q. And can you tell me a little bit --</b></p> <p>18 <b>well, how many times have you been sued as a</b></p> <p>19 <b>defendant?</b></p> <p>20 A. Once.</p> <p>21 <b>Q. Okay. And not to delve too much into</b></p> <p>22 <b>your private area, but can you tell me the</b></p> <p>23 <b>circumstances of that?</b></p> <p>24 A. I was in training. I was present in a</p>	<p style="text-align: right;">Page 12</p> <p><b>Q. (By Mr. Hall) Have you ever testified</b></p> <p><b>in court?</b></p> <p>A. No.</p> <p><b>Q. And to your knowledge, have you ever</b></p> <p><b>-- you never testified and this is the first time</b></p> <p><b>you've been an expert, right, so -- okay.</b></p> <p><b>Do you have any connection with the</b></p> <p><b>railroad industry at all; friends, family --</b></p> <p>A. No.</p> <p><b>Q. -- any other kind of connection?</b></p> <p><b>Okay. And it's my understanding that</b></p> <p><b>you have authored a report which has been marked</b></p> <p><b>as Lehman -- am I pronouncing your name correctly,</b></p> <p><b>by the way?</b></p> <p>A. Lay-man.</p> <p><b>Q. Lay-man? I'm sorry.</b></p> <p>A. Although in New York it's Lee-man.</p> <p><b>Q. You know what? As soon as I get it in</b></p> <p><b>my mind, that's it.</b></p> <p><b>This has been marked as Exhibit 2.</b></p> <p><b>And some questions about your report.</b></p> <p>A. Certainly.</p> <p><b>Q. And, I'm sorry, that report --</b></p> <p>A. Do you mind if I refer to it?</p>
<p style="text-align: right;">Page 11</p> <p>1 room where there was an alleged malpractice. Five</p> <p>2 years later, the case has not been settled yet.</p> <p>3 <b>Q. And did that involve a surgical</b></p> <p>4 <b>intervention?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. But you weren't performing that?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And has that lawsuit been filed in</b></p> <p>9 <b>Massachusetts?</b></p> <p>10 A. New York.</p> <p>11 <b>Q. New York. And which county is that</b></p> <p>12 <b>pending in?</b></p> <p>13 A. It's on Long Island somewhere. I'm</p> <p>14 not sure if Suffield County sounds right or --</p> <p>15 it's something that sounds similar to that. I</p> <p>16 didn't realize that was going to be a part of</p> <p>17 this.</p> <p>18 <b>Q. No. I'm sorry. I'm just asking some</b></p> <p>19 <b>general background questions. And I'm not trying</b></p> <p>20 <b>to impune your -- I'm just trying to figure out</b></p> <p>21 <b>what your experience was prior to this case.</b></p> <p>22 MR. JOYCE: It's not part of this</p> <p>23 case.</p> <p>24 MR. HALL: No. Yeah. I promise you.</p>	<p style="text-align: right;">Page 13</p> <p><b>Q. Oh, no. You may. Please do. It's</b></p> <p><b>dated November 24th, 2008, is that correct?</b></p> <p>A. Yes.</p> <p><b>Q. Okay. And it's my understanding that</b></p> <p><b>you were contacted by Attorney Joyce, via the</b></p> <p><b>letter that's Exhibit Number 5, in April of 2008,</b></p> <p><b>is that correct?</b></p> <p>A. That is incorrect. No.</p> <p><b>Q. Okay. When did you --</b></p> <p>A. I did not receive this letter in</p> <p>April.</p> <p><b>Q. I'm sorry. What is it dated?</b></p> <p>A. It is dated April. But I received it</p> <p>-- I don't know when I received it, to be honest.</p> <p>It must have been at least September or October.</p> <p><b>Q. And were you paid to provide the</b></p> <p><b>narrative report?</b></p> <p>A. Yes, our standard office fee.</p> <p><b>Q. And what's that fee?</b></p> <p>A. \$550.</p> <p><b>Q. And approximately how long did you</b></p> <p><b>work on it?</b></p> <p>A. Well, the chart review and the</p> <p>deposition took me probably between an hour and an</p>

<p style="text-align: right;">Page 14</p> <p>1 hour and a half.</p> <p>2 <b>Q. And prior to today, had you talked to</b></p> <p>3 <b>Mr. Joyce --</b></p> <p>4 A. No.</p> <p>5 <b>Q. -- or any representatives from his</b></p> <p>6 <b>office?</b></p> <p>7 A. I personally did not, no.</p> <p>8 <b>Q. And did you speak with Mr. Joyce</b></p> <p>9 <b>today, before your deposition?</b></p> <p>10 A. I did.</p> <p>11 <b>Q. And how long did you speak with</b></p> <p>12 <b>Mr. Joyce?</b></p> <p>13 A. Approximately five minutes.</p> <p>14 <b>Q. And what did you guys talk about?</b></p> <p>15 A. We just talked about the case,</p> <p>16 preparation of the case, details of the case.</p> <p>17 <b>Q. Did he talk to you about the FELA?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Do you know what the FELA is?</b></p> <p>20 A. No, I do not.</p> <p>21 <b>Q. Okay. And it's my understanding that,</b></p> <p>22 <b>in looking at your report -- and please correct</b></p> <p>23 <b>me, if I'm wrong -- on Page 2 of your report,</b></p> <p>24 <b>third paragraph from the bottom -- your main</b></p>	<p style="text-align: right;">Page 16</p> <p><b>Q. Have you ever reviewed the scientific</b></p> <p><b>literature in regard to causation or the</b></p> <p><b>development of musculoskeletal disorders or</b></p> <p><b>degenerative joint disease --</b></p> <p>A. Certainly.</p> <p><b>Q. -- in the spine or, I'm sorry -- the</b></p> <p><b>spine -- in the knees?</b></p> <p>A. Certainly.</p> <p><b>Q. And did any of that have any</b></p> <p><b>relationship or any impact on your narrative</b></p> <p><b>report?</b></p> <p>A. Well, I always use my education and my</p> <p>knowledge to formulate opinions. None of this is</p> <p>black and white. There's many shades of gray.</p> <p>And without using your best judgment and</p> <p>education, it's, you know, would be difficult to</p> <p>formulate an opinion. So yes.</p> <p><b>Q. Okay. And I apologize, because I --</b></p> <p><b>I'll just, you know, be up front. And I'm just a</b></p> <p><b>lawyer; you're the doctor, and so -- but what I've</b></p> <p><b>gleaned from reading your report is that -- and</b></p> <p><b>just correct me, if I'm wrong -- that, in April of</b></p> <p><b>'07 Mr. Crowther, had a bilateral knee</b></p> <p><b>arthroplasty.</b></p>
<p style="text-align: right;">Page 15</p> <p>1 <b>opinion, I guess, is that it's more likely than</b></p> <p>2 <b>not that Mr. Crowther's work conditions have</b></p> <p>3 <b>aggravated the symptoms of his osteoarthritis, but</b></p> <p>4 <b>his osteoarthritis was caused by his original</b></p> <p>5 <b>injuries back in the early 1970s, is that</b></p> <p>6 <b>accurate?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And do you hold any opinions outside</b></p> <p>9 <b>of your narrative report?</b></p> <p>10 A. No.</p> <p>11 <b>Q. And did you review any of the</b></p> <p>12 <b>litigation materials, or can you tell me what</b></p> <p>13 <b>materials, if any, are reviewed, in advance of</b></p> <p>14 <b>drafting a report?</b></p> <p>15 A. I reviewed the patient's history, the</p> <p>16 patient's chart, my office notes. I also referred</p> <p>17 to the American Medical Association Guide to</p> <p>18 Permanent Impairment to establish his impairment</p> <p>19 rating.</p> <p>20 <b>Q. Okay. Anything else?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Did you review any particular</b></p> <p>23 <b>literature, any scientific literature?</b></p> <p>24 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>A. That's correct.</p> <p><b>Q. And that was a result of</b></p> <p><b>osteoarthritis in both of his knees, is that</b></p> <p><b>right?</b></p> <p>A. That is correct, yes.</p> <p><b>Q. Okay. So it was the osteoarthritis</b></p> <p><b>that caused him to have to have surgery, correct?</b></p> <p>A. Well, it was the pain from the</p> <p>osteoarthritis which caused him to have a surgery.</p> <p>We don't treat the x-rays. We treat the patient.</p> <p>And the patient was having pain, secondary to his</p> <p>osteoarthritis, and that was refractory to other</p> <p>treatments. So the ultimate treatment for</p> <p>arthritis of the knee or pain, secondary to</p> <p>osteoarthritis of the knee, is a knee replacement.</p> <p><b>Q. And my understanding is that your</b></p> <p><b>opinion is that his old injuries or old surgeries</b></p> <p><b>caused the osteoarthritis, is that correct?</b></p> <p>A. They contributed. I think the cause</p> <p>of osteoarthritis is multi-factorial.</p> <p><b>Q. Well, in your multi-factorial</b></p> <p><b>analysis, you said it was more likely than not</b></p> <p><b>that his work conditions may have aggravated his</b></p> <p><b>symptoms, but that his osteoarthritis was caused</b></p>

<p style="text-align: right;">Page 18</p> <p>1 by his original injuries to the back in the early</p> <p>2 1970s, right?</p> <p>3 A. Yes.</p> <p>4 Q. And so we can agree that his</p> <p>5 osteoarthritis was caused, in your opinion, within</p> <p>6 a reasonable degree of medical certainty, was</p> <p>7 linked back to his original injuries in the early</p> <p>8 '70s, right?</p> <p>9 MR. JOYCE: Objection. You can</p> <p>10 answer.</p> <p>11 THE WITNESS: I mean, that's a</p> <p>12 slippery slope you have there. I mean, I</p> <p>13 think literature would show you that</p> <p>14 following removal of the meniscus, which he</p> <p>15 had, greater than ninety percent of the</p> <p>16 individuals will develop osteoarthritis</p> <p>17 after twenty years or so. Whether that</p> <p>18 arthritis is symptomatic or not is a</p> <p>19 separate issue.</p> <p>20 Q. (By Mr. Hall) Okay. But the onset of</p> <p>21 the disease is osteoarthritis, correct?</p> <p>22 A. I think one of the major contributing</p> <p>23 factors to his osteoarthritis is his original</p> <p>24 injuries back in the early 1970s.</p>	<p style="text-align: right;">Page 20</p> <p>by his original injuries and there isn't anything</p> <p>else mentioned, is that correct?</p> <p>A. That's correct.</p> <p>Q. And when you received this letter</p> <p>marked as Exhibit 5, Mr. Joyce asked you, in your</p> <p>opinion, were Geoffrey Crowther's knee injuries</p> <p>and subsequent knee surgeries, in whole or in</p> <p>part, caused, contributed to, or aggravated by his</p> <p>work at the railroad, isn't that right?</p> <p>A. Let me see. Yes, it is.</p> <p>Q. Okay. And the report that you gave,</p> <p>after being asked to do that, was that his</p> <p>original injuries caused his osteoarthritis, is</p> <p>that correct?</p> <p>A. Well, if you look at the third</p> <p>paragraph in my report, he had a work-related</p> <p>injury and tore his left ACL.</p> <p>Q. In 1986?</p> <p>A. Yes.</p> <p>Q. Okay.</p> <p>A. And that I also said, May have</p> <p>contributed to a certain extent to this</p> <p>gentleman's development of osteoarthritis.</p> <p>Q. Okay. So it was either his -- I'm</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. Well, and you excluded his work</p> <p>2 as being a cause of his osteoarthritis, isn't that</p> <p>3 correct?</p> <p>4 A. No, that's not correct.</p> <p>5 Q. Well, it's not reflected in your</p> <p>6 report that his osteoarthritis was caused by his</p> <p>7 work conditions, isn't that correct?</p> <p>8 A. It's not reflected in the report that</p> <p>9 the osteoarthritis he had was caused by his work,</p> <p>10 but it's -- I perhaps didn't elaborate enough in</p> <p>11 the report. However, I think that it's safe to</p> <p>12 say that, radiographically, his osteoarthritis was</p> <p>13 probably initiated and caused by his original</p> <p>14 injuries, although I think other factors also</p> <p>15 caused the arthritis, whether that be working on</p> <p>16 the railroad or genetic factors. I mean, there's</p> <p>17 a lot of things involved in the development of</p> <p>18 arthritis and the symptoms of it, as well.</p> <p>19 Q. Okay. Well, let's back up. It's</p> <p>20 pretty clear that when you drafted this letter, it</p> <p>21 was your opinion, within a reasonable degree of</p> <p>22 medical certainty and I think subject to being</p> <p>23 sworn under the pains and penalties of perjury,</p> <p>24 that it was his -- his osteoarthritis was caused</p>	<p style="text-align: right;">Page 21</p> <p>sorry. So it was either his injuries in 1986 or</p> <p>his injuries in the '70s which -- I think one was</p> <p>a sports-related injury five years before he</p> <p>started at the railroad -- that those were the</p> <p>things that were causing his osteoarthritis?</p> <p>A. Those are the things that led to the</p> <p>development of osteoarthritis. You do not develop</p> <p>arthritis immediately after such an injury. It</p> <p>takes twenty years or so to develop those types of</p> <p>changes. And I think those are the things that --</p> <p>I think that's the majority of what we're talking</p> <p>about here, those things, yes.</p> <p>Q. Okay. And so, when you were just</p> <p>talking about work being a contributor, you were</p> <p>talking about that 1986 accident --</p> <p>MR. JOYCE: Objection.</p> <p>Q. (By Mr. Hall) -- is that correct?</p> <p>A. That's not correct, no. I think that</p> <p>the repetitive stress of being at the railroad</p> <p>exacerbated his pre-existing condition of</p> <p>arthritis.</p> <p>Q. And when you say, "exacerbated his</p> <p>condition," you mean his symptoms got worse?</p> <p>A. Yes.</p>

<p style="text-align: right;">Page 22</p> <p>1 <b>Q. You're not saying, within a reasonable</b>  2 <b>degree of medical certainty, that his job at the</b>  3 <b>Railroad caused or contributed to an actual</b>  4 <b>acceleration of the disease process, are you?</b>  5 MR. JOYCE: Objection.  6 THE WITNESS: Well, I think it's  7 unclear whether that is the case or not. I  8 mean, there's no --  9 <b>Q. (By Mr. Hall) I'm sorry. That's</b>  10 <b>unclear?</b>  11 A. It's unclear. I mean, I think, with a  12 reasonable degree of medical certainty, if  13 someone's lifting fifty pounds a day, I think that  14 would accelerate the amount of osteoarthritis you  15 have. I don't think it necessarily initiated the  16 osteoarthritis, but it certainly accelerated it.  17 <b>Q. Well, do you have any objective</b>  18 <b>scientific evidence to support that his job duties</b>  19 <b>at the Railroad caused or contributed to --</b>  20 A. No.  21 <b>Q. -- an actual acceleration?</b>  22 A. Absolutely not.  23 <b>Q. Okay. So -- and you've never reviewed</b>  24 <b>his job duties, have you?</b></p>	<p style="text-align: right;">Page 24</p> <p><b>you ask Mr. Crowther about his job?</b>  A. When I last saw him, yes, probably in  April, April of 2007, I believe. Or was it  February?  <b>Q. And what did he tell you he did then?</b>  A. He said he worked on the railroad for  upwards of thirty years and did a lot of heavy  work for it. I didn't get the actual job  description at that time because I did not believe  he was filing this under Workers' Compensation.  <b>Q. Did you take down any notes as to the</b>  <b>frequency, the amount of bending, stooping,</b>  <b>lifting, or his use of tools; did you try to look</b>  <b>at the frequency or anything, or any details about</b>  <b>that in your file at all?</b>  A. No.  <b>Q. Have you ever went out and looked at</b>  <b>the type of work that Mr. Crowther did?</b>  A. No.  <b>Q. Have you ever seen any videotape of</b>  <b>the type of work that Mr. Crowther did?</b>  A. No.  <b>Q. Do you have any familiarity with the</b>  <b>types of things he actually did, other than --</b></p>
<p style="text-align: right;">Page 23</p> <p>1 A. Well, I think it did mention that, in  2 Attorney Joyce's note, that he had -- "As a track  3 laborer, track welder, track foreman, track  4 inspector and welder foreman," that "his tasks  5 included operating all types of equipment such as  6 hand and power tools including torches, electric  7 and gas welding equipment, grinders, chipping  8 guns, track chisels, sledge hammers, claw bars,  9 spiking mauls, needle guns, air impact hammers and  10 saws. His tasks required him to stoop, bend, and  11 kneel while welding and repairing railroad track.  12 These tasks also exposed him to an extreme amount  13 of repetitive strenuous motion, vibration force  14 and awkward postures, heavy lifting and carrying  15 along with excessive walking on uneven ballast."  16 So that's the job description that I  17 was privy to.  18 <b>Q. Okay. So the job description that --</b>  19 <b>did you rely on anything else in coming up with</b>  20 <b>the idea that his work may have played a role in</b>  21 <b>his problem, other than what you were provided by</b>  22 <b>Mr. Joyce?</b>  23 A. Common sense.  24 <b>Q. Okay. Well, let me ask you this: Did</b></p>	<p style="text-align: right;">Page 25</p> <p>A. Just from what I'm reading in this  report. That's it.  <b>Q. And you would understand that that was</b>  <b>given to you by the plaintiff's lawyer, right?</b>  A. Yes.  <b>Q. And did you read that with any</b>  <b>skepticism?</b>  MR. JOYCE: Objection.  THE WITNESS: No, I did not.  <b>Q. (By Mr. Hall) Okay. And I suppose</b>  <b>you didn't perform any scientific analysis on the</b>  <b>exposure he had at the Railroad, did you?</b>  A. No.  <b>Q. And not only didn't you quantify his</b>  <b>exposure, but you also didn't quantify any rest</b>  <b>period or down-time that he may have had on the</b>  <b>job as well, is that correct?</b>  A. That's correct.  <b>Q. And did you talk to Mr. Crowther about</b>  <b>his past work history?</b>  A. I'm sorry?  <b>Q. His past work history.</b>  A. No, I did not. I was more interested  in treating his knees, replacing his knees.</p>

<p style="text-align: right;">Page 26</p> <p>1 <b>Q. And you're not an occupational</b></p> <p>2 <b>medicine doctor, are you?</b></p> <p>3 A. No.</p> <p>4 <b>Q. And you know that there's a specialty</b></p> <p>5 <b>in occupational medicine?</b></p> <p>6 A. I do.</p> <p>7 <b>Q. And those folks deal specifically with</b></p> <p>8 <b>work-related conditions, is that right?</b></p> <p>9 A. As far as I know, yes.</p> <p>10 <b>Q. And fair to say that's not what you do</b></p> <p>11 <b>on a day-to-day basis?</b></p> <p>12 A. That's correct.</p> <p>13 <b>Q. And you're a treating doctor and a</b></p> <p>14 <b>surgeon, right?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. And you don't routinely examine</b></p> <p>17 <b>workers to determine whether or not their work</b></p> <p>18 <b>caused or contributed to a problem they're having,</b></p> <p>19 <b>right?</b></p> <p>20 A. That's correct.</p> <p>21 <b>Q. And you'd agree with me, sir, that it</b></p> <p>22 <b>would be important, if you were making a work-</b></p> <p>23 <b>related opinion, to have some sound basis of what</b></p> <p>24 <b>the actual work was, would you agree with that?</b></p>	<p style="text-align: right;">Page 28</p> <p><b>knees?</b></p> <p>A. He was using air impact hammers and chipping guns, grinders, welding equipment. These are very heavy instruments.</p> <p><b>Q. Okay. And what's your basis for determining whether or not they're heavy?</b></p> <p>A. Mr. Joyce's letter. Mr. Joyce's letter. I mean, I think they sound pretty heavy to me.</p> <p><b>Q. Okay. Well, what vibratory stress was involved, in regard to his knees?</b></p> <p>A. I suppose I was using Attorney Joyce's letter, where he mentioned he was exposed to "an extreme amount of repetitive strenuous motion, vibration, force and awkward postures, heavy lifting and carrying along with excessive walking on uneven" ground. I think I was utilizing that paragraph as my basis for my analysis.</p> <p><b>Q. Okay. Without having ever seen the job or seeing videotape of the job, do you believe that you have a scientific basis to make that conclusion, that he had, you know, exposure to heavy lifting, repetitive strenuous motion, and vibratory stress?</b></p>
<p style="text-align: right;">Page 27</p> <p>1 A. That is correct.</p> <p>2 <b>Q. And would you agree you don't have a</b></p> <p>3 <b>firm, factual foundation of Mr. Crowther's actual</b></p> <p>4 <b>job duties --</b></p> <p>5 A. No.</p> <p>6 <b>Q. -- and exposure?</b></p> <p>7 MR. JOYCE: Objection.</p> <p>8 THE WITNESS: I think it says pretty</p> <p>9 clearly what he does here, and it seems like</p> <p>10 it's pretty heavy work. I think I have a</p> <p>11 fair judgment of what he's doing.</p> <p>12 <b>Q. (By Mr. Hall) Okay. And would you</b></p> <p>13 <b>agree that the description of any causality, with</b></p> <p>14 <b>regard to any specific work duties, is not</b></p> <p>15 <b>contained in your report?</b></p> <p>16 A. Well, I mentioned that he's done a lot</p> <p>17 of heavy lifting and repetitive strenuous motion.</p> <p>18 <b>Q. And can you define that for me, in</b></p> <p>19 <b>terms of Mr. Crowther's actual work history?</b></p> <p>20 A. I'm sorry. I don't understand the</p> <p>21 question.</p> <p>22 <b>Q. Well, you know, what vibratory stress</b></p> <p>23 <b>or what heavy lifting or repetitive strenuous</b></p> <p>24 <b>motions did he have to do with regard to his</b></p>	<p style="text-align: right;">Page 29</p> <p>A. I have no reason to doubt it.</p> <p><b>Q. Do you have any sound scientific data upon which to rely upon?</b></p> <p>A. No.</p> <p><b>Q. Have you ever seen an ergonomic assessment of the type of work that Mr. Crowther did?</b></p> <p>A. No.</p> <p><b>Q. And would you agree with me that you don't have a scientific basis for those conclusions?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: I think if --</p> <p><b>Q. (By Mr. Hall) You were given those conclusions by a lawyer, right?</b></p> <p>A. Yes.</p> <p><b>Q. And that's not scientific, correct?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Aren't you a lawyer?</p> <p>MR. HALL: Yes, I'm a lawyer, so --</p> <p><b>Q. (By Mr. Hall) But you'd agree with me that you were given information by a lawyer?</b></p> <p>A. I was given information. And I take information, as given to me, as truth, so --</p>



<p style="text-align: right;">Page 30</p> <p>1 <b>Q. But you weren't enclosed -- you</b>  2 <b>were'n't given an ergonomic assessment by</b>  3 <b>Mr. Joyce, were you?</b>  4 A. No.  5 <b>Q. And you didn't review or rely upon an</b>  6 <b>ergonomic assessment, is that correct?</b>  7 A. That's correct.  8 <b>Q. And so really, other than Mr. Joyce's</b>  9 <b>conclusory statements, you have no scientific</b>  10 <b>information to support those conclusions, is that</b>  11 <b>right?</b>  12 A. That's correct.  13 <b>Q. And in fact, I believe Mr. Crowther</b>  14 <b>began -- presented to you in February of '07, is</b>  15 <b>that right?</b>  16 A. Yes.  17 <b>Q. And at that time, you indicated that</b>  18 <b>he was having severe pain and disability in regard</b>  19 <b>to both his knees, is that right?</b>  20 A. Yes.  21 <b>Q. Okay. And how long was his symptoms</b>  22 <b>-- how long had he been symptomatic at the point</b>  23 <b>he saw you in February of '07, do you recall?</b>  24 A. He said to me two years.</p>	<p style="text-align: right;">Page 32</p> <p><b>terms of even severe arthritic changes in his</b>  <b>right knee back in 1986, would you expect someone</b>  <b>like Mr. Crowther to be symptomatic prior to</b>  <b>February of 2005?</b>  MR. JOYCE: Objection.  THE WITNESS: I'm sorry. "Would" --  <b>Q. (By Mr. Hall) Would you expect</b>  <b>someone like Mr. Crowther to be symptomatic prior</b>  <b>to 2005?</b>  A. Not necessarily, no.  <b>Q. And you actually went in and did the</b>  <b>surgery, is that right?</b>  A. Yes.  <b>Q. And when you went in, can you tell me</b>  <b>what you saw; I mean, did you see evidence of the</b>  <b>prior surgeries when you did your surgery?</b>  A. I have the operative note here. I  mean, the patient did have previous incisions.  So, I mean, that was the first evidence that I  saw. He had two previous incisions on the left  knee, one previous incision on the right knee.  <b>Q. So he had two surgeries on his left</b>  <b>knee, and he had one surgery on his right knee,</b>  <b>based on what you saw?</b></p>
<p style="text-align: right;">Page 31</p> <p>1 <b>Q. Two years? So February 28 of 2005?</b>  2 A. I'm sure he was approximating. But  3 certainly, that's -- I mean, my history said, Pain  4 in the last two years.  5 <b>Q. Okay. And I presume you weren't</b>  6 <b>provided any records outside of what's in your --</b>  7 <b>of what's in Exhibits 3 and 4, right?</b>  8 A. This is all I have to go on.  9 <b>Q. Were you aware that, for instance,</b>  10 <b>with regard to Mr. Crowther's right knee, that he</b>  11 <b>had an x-ray from 4/24 of 1986 that indicated that</b>  12 <b>he had an extreme, severe degree of osteoarthritic</b>  13 <b>changes in the medial and lateral aspects of the</b>  14 <b>joint?</b>  15 A. I never saw that.  16 <b>Q. And he had osteophytes in the superior</b>  17 <b>aspect of the patella and the anterior portion of</b>  18 <b>the femur; were you aware of that?</b>  19 A. No, I was not.  20 <b>Q. And were you aware that in 1998, in</b>  21 <b>the medical record, he was complaining that his</b>  22 <b>knees were bothersome; were you aware of that?</b>  23 A. No.  24 <b>Q. And with that type of history, in</b></p>	<p style="text-align: right;">Page 33</p> <p>A. That was my understanding, my history.  I do not have the records to support that.  <b>Q. And did you see any other evidence of</b>  <b>surgery, prior surgery?</b>  A. I do not think so.  <b>Q. And the good news is that Mr. Crowther</b>  <b>did extraordinarily well, in terms of his knee</b>  <b>replacement, is that right?</b>  A. That is correct.  <b>Q. And he basically, as of April 14th,</b>  <b>2008 -- was that the last time you saw him, by the</b>  <b>way?</b>  A. That he saw one of my assistants, yes.  <b>Q. And that was his last visit with you?</b>  A. Yes.  <b>Q. And at that point, he basically was</b>  <b>returning to normal activities, without</b>  <b>restriction, is that right?</b>  MR. JOYCE: Objection.  THE WITNESS: Just give me a moment to  read this note again, please.  MR. HALL: Sure. It's also -- and I'm  looking at your report, on the first page.  And I'm not sure I want to dissuade you from</p>

<p style="text-align: right;">Page 34</p> <p>1 looking at the note, if you want, but --</p> <p>2 THE WITNESS: He was having some</p> <p>3 irritability in the left knee; but in</p> <p>4 general, after knee replacement, was doing</p> <p>5 very well.</p> <p>6 <b>Q. (By Mr. Hall) And he essentially was</b></p> <p>7 <b>back to normal activities, without restriction,</b></p> <p>8 <b>right?</b></p> <p>9 A. Depends on what those activities --</p> <p>10 what you define "normal" as, I guess.</p> <p>11 <b>Q. Well, those were your words, right?</b></p> <p>12 A. Where is that?</p> <p>13 <b>Q. I'm sorry. It's the first page, third</b></p> <p>14 <b>paragraph, last sentence, quote, He was</b></p> <p>15 <b>"essentially" --</b></p> <p>16 A. That's correct, yes.</p> <p>17 <b>Q. That's correct?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. And what was the mild discomfort he</b></p> <p>20 <b>was having in his left knee?</b></p> <p>21 A. He described it as a mild soreness.</p> <p>22 <b>Q. Do you recall if, during the course of</b></p> <p>23 <b>his recuperation from his knee surgeries, whether</b></p> <p>24 <b>or not he had an incident with his left knee; does</b></p>	<p style="text-align: right;">Page 36</p> <p><b>working at that time, when that hyperextension</b></p> <p><b>injury occurred, was he?</b></p> <p>A. I do not know that, the answer to that.</p> <p><b>Q. And, I'm sorry, what was the date of that injury?</b></p> <p>A. July 17th, 2007 was when we -- he reported the injury to us. I don't -- it doesn't say when he had that. I'm assuming not too far prior to that, or he would have come in sooner.</p> <p><b>Q. And could that account for the residual difficulties that he's having?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: There's no way to know, without discussing with Mr. Crowther exactly what that injury was and how serious it was.</p> <p><b>Q. (By Mr. Hall) And did you do that?</b></p> <p>A. No.</p> <p><b>Q. And did you take that into account in your -- in coming to your conclusions in your report -- that --</b></p> <p>A. I didn't think it was relevant.</p> <p><b>Q. And why not?</b></p> <p>A. Because it seemed to be very mild and</p>
<p style="text-align: right;">Page 35</p> <p>1 <b>that ring a bell?</b></p> <p>2 A. One moment, please.</p> <p>3 <b>Q. Sure.</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And what was that incident?</b></p> <p>6 A. Approximately -- it says here, after</p> <p>7 three -- three months -- three-month post-op</p> <p>8 visit, July 17th, 2007, he had a hyperextension</p> <p>9 injury to the knee, with some swelling.</p> <p>10 <b>Q. And what's a hyperextension injury;</b></p> <p>11 <b>what does that mean?</b></p> <p>12 A. Essentially, bending the wrong way;</p> <p>13 essentially.</p> <p>14 <b>Q. And do you know how that happened?</b></p> <p>15 A. It does not elaborate on that, no. He</p> <p>16 saw one of my assistants for that visit, not</p> <p>17 myself.</p> <p>18 <b>Q. Is there any more detail than that?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Is that something that usually happens</b></p> <p>21 <b>during the course of, you know, recuperation from</b></p> <p>22 <b>knee surgery?</b></p> <p>23 A. It's not infrequent, no.</p> <p>24 <b>Q. And could that -- and he wasn't</b></p>	<p style="text-align: right;">Page 37</p> <p>he still did very well despite -- if it was a serious injury, he probably would have required intervention and no intervention was required and x-rays remained normal.</p> <p><b>Q. But in terms of your -- in your opinion, his left knee had an extraordinarily good outcome, as well?</b></p> <p>A. Yes.</p> <p><b>Q. And would you agree with me, sir, that age is a risk factor for the development of osteoarthritis in the knees?</b></p> <p>A. I think genetics are the risk factor. Age -- certainly it's more -- it's more common in older people, yeah. I don't know if age is an independent variable or not.</p> <p><b>Q. Okay. Well, is it unusual for a person of Mr. Crowther's age to have osteoarthritis in his knees, irrespective of his oc -- his or her occupation?</b></p> <p>A. No, it's not unusual.</p> <p><b>Q. Not unusual. It's pretty common, correct?</b></p> <p>A. More than one half of the knee replacements I do are in people under sixty, so --</p>

<p style="text-align: right;">Page 38</p> <p>1 <b>Q. And we can agree that, at least in</b>  2 <b>part, age may have played a role in the</b>  3 <b>development of his osteoarthritis in his knees;</b>  4 <b>can we agree on that?</b>  5 A. No.  6 <b>Q. And why not?</b>  7 A. He's too young to have age as being a  8 factor.  9 <b>Q. At what age do you need to be --</b>  10 A. Typically, osteoarthritis is not seen,  11 if it were not for some other type of insult to  12 the knee or genetic predisposition, until the  13 patient's seventies.  14 <b>Q. And did you ever determine whether or</b>  15 <b>not he had a genetic predisposition?</b>  16 A. I don't think there's any way to do  17 that.  18 <b>Q. Did you ask him if he had a history of</b>  19 <b>traumas or falling on his knees or anything like</b>  20 <b>that?</b>  21 A. He had a history of an ACL injury at  22 work in 1986. And he also had two sports-related  23 injuries, one or two. It's unclear, via his  24 history. But he had his meniscus out, in both</p>	<p style="text-align: right;">Page 40</p> <p><b>Q. And in fact, surgery is also -- is an</b>  <b>independent risk factor for the development of</b>  <b>arthritis, correct?</b>  A. No. It depends on what type of  surgery it is.  <b>Q. Okay. The type of surgeries that Mr.</b>  <b>Crowther had, with regard to his knees.</b>  A. Yes.  <b>Q. They are risk factors for the</b>  <b>development of osteoarthritis down the road,</b>  <b>correct?</b>  A. Yes.  <b>Q. And we can agree that -- certainly --</b>  <b>that Mr. Crowther's surgeries and prior injuries</b>  <b>played a significant role in the development of</b>  <b>his problems; correct?</b>  A. Yes.  <b>Q. Are there any other risk factors for</b>  <b>the development of osteoarthritis that we haven't</b>  <b>discussed?</b>  A. Not that Mr. Crowther has, no.  <b>Q. And did you rule out any other risk</b>  <b>factors?</b>  A. No.</p>
<p style="text-align: right;">Page 39</p> <p>1 knees, back in the 1970s, subsequent ACL injury.  2 I think that both those injuries are enough to --  3 <b>Q. To cause osteoarthritis?</b>  4 A. At this age, yes.  5 <b>Q. And so we can agree that prior trauma</b>  6 <b>is an independent risk factor for the development</b>  7 <b>of --</b>  8 A. Oh, absolutely.  9 <b>Q. And that it certainly played a great</b>  10 <b>role in the development of Mr. Crowther's</b>  11 <b>problems, correct?</b>  12 A. It played a very big role, yes.  13 <b>Q. And can we agree that weight also</b>  14 <b>plays a role in the development of degenerative</b>  15 <b>conditions in the knees?</b>  16 A. Yes.  17 <b>Q. And can we agree that Mr. Crowther's</b>  18 <b>weight may have contributed?</b>  19 A. No.  20 <b>Q. And why not?</b>  21 A. He's not -- in my opinion, being six-  22 foot-one, 212 pounds -- and if I recall correctly,  23 he's in pretty decent shape -- he's not an obese  24 individual.</p>	<p style="text-align: right;">Page 41</p> <p><b>Q. And without belaboring it, but what</b>  <b>are the other risk factors; if you didn't rule</b>  <b>anything else out, what else could possibly be</b>  <b>playing a role?</b>  A. Other injuries. Like you mentioned,  genetic predisposition. There are lots of things  that can cause damage to the bones. Autoimmune  diseases. Osteonecrosis of the bone. It can be  caused by a number of things. But these items  were irrelevant at the time of me treating him.  In my opinion, his risk factors were  his injuries and previous surgeries and his job.  <b>Q. Okay. And his job played the smallest</b>  <b>role, correct?</b>  MR. JOYCE: Objection.  THE WITNESS: It's difficult to  quantify. It played a role.  <b>Q. (By Mr. Hall) And we can agree, and</b>  <b>I'm not trying to belabor the point, that that's</b>  <b>outside the confines of your report?</b>  MR. JOYCE: Objection. It's not  outside the confines of his report.  THE WITNESS: What's the --  MR. HALL: That his work played a role</p>

<p style="text-align: right;">Page 42</p> <p>1 in the development of his osteoarthritis.</p> <p>2 THE WITNESS: No. I mentioned it in</p> <p>3 two different places, I believe.</p> <p>4 <b>Q. (By Mr. Hall) Okay. You said that it</b></p> <p>5 <b>made him more symptomatic?</b></p> <p>6 A. Yes. We treated his symptoms of knee</p> <p>7 replacement.</p> <p>8 <b>Q. Okay. And --</b></p> <p>9 A. We didn't treat his x-rays. We</p> <p>10 treated his symptoms.</p> <p>11 <b>Q. Okay. And I --</b></p> <p>12 A. If he didn't have symptoms, I wouldn't</p> <p>13 have had to operate on him.</p> <p>14 <b>Q. But in terms of causing the disease</b></p> <p>15 <b>that produced the symptoms, you did not link work</b></p> <p>16 <b>to the cause --</b></p> <p>17 <b>(Multiple speakers.)</b></p> <p>18 THE WITNESS: Can you repeat that</p> <p>19 again, please?</p> <p>20 MR. HALL: Sure.</p> <p>21 <b>Q. (By Mr. Hall) You said that his job</b></p> <p>22 <b>duties may have made him more symptomatic, right?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And you did not say that his work</b></p>	<p style="text-align: right;">Page 44</p> <p>MR. HALL: Whether he would not --</p> <p>whether he would have developed symptoms,</p> <p>irrespective --</p> <p>MR. JOYCE: Objection. He's already</p> <p>testified to that.</p> <p><b>Q. (By Mr. Hall) So the answer is --</b></p> <p>A. I don't --</p> <p><b>Q. You said that you can't say whether or</b></p> <p><b>not he would have become symptomatic either way,</b></p> <p><b>right?</b></p> <p>MR. JOYCE: He's already testified</p> <p>that the job aggravated and worsened his</p> <p>symptoms.</p> <p>MR. HALL: Please. Please.</p> <p>MR. JOYCE: Don't change the</p> <p>testimony, Steve. You're --</p> <p>MR. HALL: I'm not changing it.</p> <p>MR. JOYCE: You know what? Note my</p> <p>objection. That's all.</p> <p>THE WITNESS: I mean, I think -- I</p> <p>believe his work exacerbated his previous</p> <p>condition of osteoarthritis. That's my</p> <p>testimony.</p> <p><b>Q. (By Mr. Hall) And are you relying on</b></p>
<p style="text-align: right;">Page 43</p> <p>1 <b>produced the underlying disease, is that correct?</b></p> <p>2 <b>I mean, that's what your report states.</b></p> <p>3 A. That's correct, other than the ACL</p> <p>4 injury --</p> <p>5 <b>Q. In 1986.</b></p> <p>6 A. -- in 1986, which, from my</p> <p>7 understanding, was also a work-related injury.</p> <p>8 <b>Q. Okay. That was a trauma that occurred</b></p> <p>9 <b>at work?</b></p> <p>10 A. I believe that also caused the</p> <p>11 arthritis in his left knee, in addition to the</p> <p>12 cartilage procedures he had in the early '70s,</p> <p>13 which are not work-related. I think he would have</p> <p>14 developed arthritis, irrespective of his job, with</p> <p>15 the aforementioned operations on his knees.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. However, I do not know if he would</p> <p>18 have become symptomatic from his arthritis, had it</p> <p>19 not been for his job. It's impossible to say.</p> <p>20 <b>Q. And so you can't say, within a</b></p> <p>21 <b>reasonable degree of medical certainty, either</b></p> <p>22 <b>way?</b></p> <p>23 MR. JOYCE: Objection.</p> <p>24 THE WITNESS: Either way what?</p>	<p style="text-align: right;">Page 45</p> <p><b>any particular literature for that conclusion?</b></p> <p>A. I don't have a study, off the top of</p> <p>my head. But certainly, heavy lifting and</p> <p>repetitive motions can certainly exacerbate the</p> <p>symptoms of arthritis.</p> <p><b>Q. How about motions in lifting, outside</b></p> <p><b>of work; could that also exacerbate --</b></p> <p>A. Sure.</p> <p><b>Q. -- or increase the amount of symptoms?</b></p> <p>A. Certainly.</p> <p><b>Q. And is there any way to differentiate</b></p> <p><b>between the amount of activity that would be</b></p> <p><b>required to produce symptoms?</b></p> <p>A. No.</p> <p><b>Q. And so you would agree with me, then,</b></p> <p><b>that, you know, walking up the steps at home could</b></p> <p><b>produce symptoms?</b></p> <p>A. It could produce symptoms.</p> <p><b>Q. Walking on a path or hiking could also</b></p> <p><b>do the same thing, right?</b></p> <p>A. Yes.</p> <p><b>Q. Or riding a bicycle, is that correct?</b></p> <p>A. Riding a bicycle is not impact.</p> <p>That's unusual, would be unusual.</p>

<p style="text-align: right;">Page 46</p> <p>1 <b>Q. Okay. How about things like, you</b>  2 <b>know, cleaning the house?</b>  3 A. That's a pretty generic activity. I  4 mean, it depends on what he's cleaning. I mean, I  5 think it has to do with vigorous activity. I  6 mean, certainly, minor activities would cause some  7 symptoms, whereas vigorous activities would cause  8 more significant symptoms.  9 <b>Q. Okay. So we can agree that you don't</b>  10 <b>have to have a particularly demanding physical</b>  11 <b>activity to exacerbate symptoms, once you have</b>  12 <b>arthritis or degenerative joint disease; can we</b>  13 <b>agree on that?</b>  14 A. Well, I think it's -- depending on the  15 activity, I think the symptoms would probably be  16 -- would correlate to the degree of activity.  17 <b>Q. And did you place any medical</b>  18 <b>restrictions on Mr. Crowther when he left your</b>  19 <b>care --</b>  20 A. I don't recall.  21 <b>Q. -- because I didn't see anything in</b>  22 <b>the medical file.</b>  23 A. I don't remember having a work release  24 note. I didn't see one in the file. But</p>	<p style="text-align: right;">Page 48</p> <p>to work and didn't need it. It's unclear to me  why he didn't get one. I usually don't give it to  someone unless they request it.  <b>Q. And someone who has these restrictions</b>  <b>can work a lighter or sedentary-type job, would</b>  <b>you agree?</b>  A. Absolutely.  <b>Q. And would you agree that Mr. Crowther</b>  <b>could work a light or sedentary-type job, based on</b>  <b>the results -- his surgical results?</b>  A. Based on his knees, yes. I can't  comment about the rest of his disabilities.  <b>Q. So we can agree that he could -- in</b>  <b>terms of his knees -- he could certainly do some</b>  <b>type of physical work?</b>  A. Physical work or sedentary work?  <b>Q. Well, lighter, sedentary-type work.</b>  A. Sedentary work, yes. Light physical  work, whatever you define that as, because I'd  have to see the description.  <b>Q. But certainly he could work in an</b>  <b>office setting, or he could work a, you know, a</b>  <b>supervisory position in a warehouse or something</b>  <b>like that?</b></p>
<p style="text-align: right;">Page 47</p> <p>1 typically we do.  2 <b>Q. And I saw that you gave him a knee</b>  3 <b>brochure. Do you have that, by chance? I mean,</b>  4 <b>we don't have to do it now. We can get it</b>  5 <b>appended to the record.</b>  6 A. Sure.  7 <b>Q. Is that something you typically send</b>  8 <b>out?</b>  9 A. Yes. I give it to all my patients  10 pre-operatively.  11 <b>Q. But in terms of his restrictions, does</b>  12 <b>he have restrictions today?</b>  13 A. Yes.  14 <b>Q. And what are those restrictions?</b>  15 A. The restrictions would be no lifting  16 frequently, greater than twenty-five pounds; no  17 lifting occasionally, greater than fifty pounds;  18 no kneeling or squatting; and no ladders.  19 <b>Q. And for whatever reason, that official</b>  20 <b>work restriction was never placed into his file,</b>  21 <b>is that right?</b>  22 A. It may have been given to him, but it  23 was not in the file, that I saw. I don't know if  24 he was going back to work or if he never went back</p>	<p style="text-align: right;">Page 49</p> <p>A. People do it all the time.  <b>Q. Okay. And that's even with an</b>  <b>impairment rating of sixty percent on the lower</b>  <b>extremity?</b>  A. Oh, yeah.  <b>Q. And that was the AMA guideline that</b>  <b>you had talked about?</b>  A. That is correct.  <b>Q. And one of the things I wanted to ask</b>  <b>you to do is to explain how you came up with the</b>  <b>impairment rating. Can you explain that to me?</b>  A. Yes. There's a chart. I think I  refer to the page number. I don't have the book  with me here. But it discusses the recovery of  knee replacement. And for different physical  findings and history from the patient, you obtain  a value out of a hundred. And he happened -- I  don't remember what his exact value is. It  doesn't say. In my note here, however, it  correlated to a good result following knee  replacement. And a good result or an excellent  result or a perfect result after knee replacement  gives you fifteen percent whole body disability  and thirty-seven percent lower extremity</p>

<p style="text-align: right;">Page 50</p> <p>1 disability on that particular knee. He happened  2 to have both knees. There's a combined values  3 chart at the back of the book which combines the  4 two.  5 <b>Q. Okay. So he got the best disability</b>  6 <b>rating possible?</b>  7 A. Yes.  8 <b>Q. So other than not having a problem, he</b>  9 <b>got the best rating, under the AMA guideline</b>  10 <b>anyway?</b>  11 A. I'm sorry?  12 <b>Q. Other than not having a disability at</b>  13 <b>all, he got the best rating after knee</b>  14 <b>replacement?</b>  15 A. This is the best possible disability  16 rating following knee replacement, yes; following  17 bilateral knee replacement.  18 <b>Q. And how is Mr. Crowther's prognosis;</b>  19 <b>is it good?</b>  20 A. Yes. I think he's reached maximum  21 medical improvement. Usually maximum medical  22 improvement is achieved at twelve, occasionally  23 eighteen months, post-operatively, and that time  24 has passed, so he has reached maximum medical</p>	<p style="text-align: right;">Page 52</p> <p>A. There is no such study that I'm aware  of. But there may be instances -- no, there's no  such study that I'm aware of.  <b>Q. Okay. And so you don't have an</b>  <b>opinion that the Railroad could have done some</b>  <b>specific change that would have resulted in him</b>  <b>not having degenerative joint disease in his knee;</b>  <b>would you agree?</b>  MR. JOYCE: Objection. That's not Dr.  Lehman's role in this case. He's not our  liability expert. He's not our ergonomic  expert.  THE WITNESS: I think job  modifications may have alleviated symptoms  related to his osteoarthritis, but not  necessarily changed his -- the fact that he  had osteoarthritis.  <b>Q. (By Mr. Hall) So you're unaware of</b>  <b>any specific scientific literature that indicates</b>  <b>a specific change to be made to his job that would</b>  <b>prevent him to have symptoms, is that correct?</b>  A. I don't think a scientific study could  ever be done in that regard.  <b>Q. Are you aware of any specific changes</b></p>
<p style="text-align: right;">Page 51</p> <p>1 improvement. I expect him to continue doing well  2 for a number of years.  3 <b>Q. And do you know of any valid studies</b>  4 <b>that have been done, that associate Mr. Crowther's</b>  5 <b>work duties with the development of degenerative</b>  6 <b>joint disease in the knees?</b>  7 A. Say that again, please.  8 <b>Q. Are you aware of any valid scientific</b>  9 <b>studies that associate the type of work duties</b>  10 <b>that Mr. Crowther did with the development of</b>  11 <b>degenerative joint disease?</b>  12 A. No.  13 <b>Q. Are you aware of any valid studies</b>  14 <b>that -- or any scientific literature -- that</b>  15 <b>indicates that there are any specific,</b>  16 <b>scientifically-accepted measures that are</b>  17 <b>preventative for degenerative joint disease of the</b>  18 <b>knees?</b>  19 A. Could you please repeat that again?  20 <b>Q. Sure. Is there anything in the</b>  21 <b>scientific literature that shows that a specific</b>  22 <b>change can be made to a job process that would</b>  23 <b>prevent the development of degenerative joint</b>  24 <b>disease in a person like Mr. Crowther?</b></p>	<p style="text-align: right;">Page 53</p> <p><b>that could have been done to Mr. Crowther's job</b>  <b>that would have changed the outcome with regard to</b>  <b>his knees?</b>  A. I think if he was more sedentary, he  would have less symptoms.  <b>Q. Other than that, that's it?</b>  A. Right.  <b>Q. And it's impossible to prevent</b>  <b>degenerative joint disease in the knees, correct?</b>  MR. JOYCE: Objection.  <b>Q. (By Mr. Hall) Is there any way to</b>  <b>prevent it?</b>  A. Just sitting on a couch for your  entire life, you'd never develop it.  <b>Q. Okay.</b>  A. It's a matter of wear and tear. The  more wear, the more tear.  <b>Q. And did you take into consideration</b>  <b>Mr. Crowther's avocational activities?</b>  A. No. Do you mean activities outside of  work?  <b>Q. Yes.</b>  A. No.  <b>Q. And activities of daily living are all</b></p>

<p style="text-align: right;">Page 54</p> <p>1 contributing to the, quote, "wear and tear" that</p> <p>2 you just talked about, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And sports and all kinds of other</p> <p>5 things, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And so you haven't made any</p> <p>8 consideration for that?</p> <p>9 A. No.</p> <p>10 Q. And that would be part of a</p> <p>11 differential diagnosis, right, to exclude things</p> <p>12 and include things?</p> <p>13 A. My job as a physician is not to --</p> <p>14 when I see a patient -- is not to determine why,</p> <p>15 necessarily, they have it but, as a surgeon, is to</p> <p>16 fix what they have. And that's what I did. And,</p> <p>17 you know, I didn't have to ask the guy, you know,</p> <p>18 how many times he walked his dog a day to</p> <p>19 determine whether or not he needs a knee</p> <p>20 replacement.</p> <p>21 Q. Okay. Point taken. Are you aware of</p> <p>22 any dose response relationship that's been</p> <p>23 established between the type of job duties that</p> <p>24 Mr. Crowther had with the development of</p>	<p style="text-align: right;">Page 56</p> <p>A. Yes.</p> <p>Q. And other than what has been provided</p> <p>by you, in terms of the letter from Mr. Joyce,</p> <p>it's my understanding you've not reviewed any of</p> <p>the case materials; depositions --</p> <p>A. Such as --</p> <p>Q. -- Mr. Crowther's deposition --</p> <p>A. No, I have not.</p> <p>Q. -- or any of the discovery that's been</p> <p>exchanged between the parties?</p> <p>A. No, I did not.</p> <p>Q. And you didn't review his railroad</p> <p>medical file, did you?</p> <p>A. No, I did not.</p> <p>Q. Or any of the medical records from Dr.</p> <p>Baustin or any of his other physicians?</p> <p>A. No. I did request it.</p> <p>Q. And, I'm sorry, who did you make that</p> <p>request to?</p> <p>A. I think my secretary made the request</p> <p>either to Mr. Crowther or to Attorney Joyce for</p> <p>the records related to his ACL injury, as well as</p> <p>his original sports injuries back in the early</p> <p>1970s.</p>
<p style="text-align: right;">Page 55</p> <p>1 degenerative joint disease in the knees?</p> <p>2 A. No.</p> <p>3 Q. Are you aware -- basically, you'd</p> <p>4 agree, sir, that we don't know how much activity</p> <p>5 is too much?</p> <p>6 A. Excuse me?</p> <p>7 A VOICE: Dr. Wenner's leaving.</p> <p>8 THE WITNESS: I'm sorry?</p> <p>9 (Off-the-record discussion.)</p> <p>10 Q. (By Mr. Hall) Fair to say we don't</p> <p>11 know how much activity is too much?</p> <p>12 A. No, we do not.</p> <p>13 Q. And that goes for -- the same for</p> <p>14 developing symptoms, is that correct?</p> <p>15 A. That's correct. It's all a judgment.</p> <p>16 Q. And did you review any other expert</p> <p>17 reports in this case?</p> <p>18 A. No.</p> <p>19 Q. Can you give me just a minute to look</p> <p>20 over my notes, and then --</p> <p>21 A. Certainly.</p> <p>22 Q. Would you agree with me, Doctor, that</p> <p>23 more information is better than less information</p> <p>24 in making causal determinations?</p>	<p style="text-align: right;">Page 57</p> <p>Q. And were those records provided to</p> <p>you?</p> <p>A. No.</p> <p>Q. And do you know why not?</p> <p>A. I was told they were not available.</p> <p>Q. And when did you make that inquiry?</p> <p>A. Prior to doing my narrative.</p> <p>Q. And is there any documentation, in</p> <p>terms of the narrative -- the request for the</p> <p>narrative -- other than Mr. Joyce's letter?</p> <p>A. Not that I'm aware of, no.</p> <p>Q. Is this the full and complete file, as</p> <p>far as you're concerned?</p> <p>A. The full and complete file for his</p> <p>knees.</p> <p>Q. Okay.</p> <p>A. But, I mean, this is --</p> <p>Q. All right. In terms of -- but there</p> <p>isn't anything else that you've touched or seen or</p> <p>looked at, other than what's here and has been</p> <p>marked as an exhibit?</p> <p>A. That is correct.</p> <p>Q. And was there anything else that you</p> <p>wanted to see, that you weren't provided with?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. No.</p> <p>2 <b>Q. Do you think it would have been</b></p> <p>3 <b>helpful for you to see some of his job duties?</b></p> <p>4 A. Well, I took Mr. Joyce's letter as</p> <p>5 being truthful and -- you know. But things that</p> <p>6 would elaborate on these things may have been more</p> <p>7 helpful, sure.</p> <p>8 <b>Q. And to the extent that Mr. Joyce is</b></p> <p>9 <b>wrong --</b></p> <p>10 MR. JOYCE: Objection.</p> <p>11 <b>Q. (By Mr. Hall) -- would you agree that</b></p> <p>12 <b>that would impact on the strength of your opinion?</b></p> <p>13 A. Well, if a guy sat at a desk all day,</p> <p>14 instead of doing what Mr. Joyce mentioned in his</p> <p>15 letter to me, then certainly it would change it.</p> <p>16 But for all intents and purposes, I think that the</p> <p>17 description here is likely accurate.</p> <p>18 <b>Q. Well, what if he was able to work at a</b></p> <p>19 <b>safe and comfortable pace; would that impact your</b></p> <p>20 <b>ability -- or would that impact, in your</b></p> <p>21 <b>estimation, the strength of your opinions?</b></p> <p>22 A. I'm not sure I understand.</p> <p>23 <b>Q. If Mr. Crowther was able to work at a</b></p> <p>24 <b>safe and comfortable pace by --</b></p>	<p style="text-align: right;">Page 60</p> <p>period of thirty years, is going to make a</p> <p>difference if he's doing a lot of heavy lifting.</p> <p><b>Q. And how about, you know, bending and</b></p> <p><b>twisting or squatting; if the ergonomic analysis</b></p> <p><b>shows that there were punitive risk factors for</b></p> <p><b>the development of musculoskeletal disorders,</b></p> <p><b>would that impact your opinion?</b></p> <p>A. I don't understand. Please rephrase.</p> <p><b>Q. If an ergonomist reviewed the job and</b></p> <p><b>said that it does not contain risk factors that</b></p> <p><b>the scientific literature has shown to be</b></p> <p><b>problematic, would that alter your opinion?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Not problematic in what</p> <p>regard?</p> <p>MR. HALL: Not problematic for --</p> <p>THE WITNESS: Not problematic for</p> <p>causing symptoms or causing arthritis?</p> <p>because there's two different things here.</p> <p>MR. HALL: For causing degenerative</p> <p>joint disease.</p> <p>THE WITNESS: I don't think that would</p> <p>have altered my opinion, no.</p> <p><b>Q. (By Mr. Hall) Okay. So if an</b></p>
<p style="text-align: right;">Page 59</p> <p>1 A. Doing what?</p> <p>2 <b>Q. Doing his job. Would that have any --</b></p> <p>3 A. Doing his current job? As long as --</p> <p>4 <b>Q. Would that have any --</b></p> <p>5 A. As long as he followed the</p> <p>6 restrictions that I outlined for you earlier --</p> <p>7 <b>Q. Okay.</b></p> <p>8 A. -- and was comfortable. Not everybody</p> <p>9 can.</p> <p>10 <b>Q. Okay. Well, what I was asking you is</b></p> <p>11 <b>that, if, over the course of his career, Mr.</b></p> <p>12 <b>Crowther was able to work at a safe and</b></p> <p>13 <b>comfortable pace, would that have an impact on</b></p> <p>14 <b>your opinion?</b></p> <p>15 A. No.</p> <p>16 <b>Q. If Mr. Crowther used appropriate</b></p> <p>17 <b>lifting techniques during the course of his career</b></p> <p>18 <b>and had assistance from others, et cetera, would</b></p> <p>19 <b>that have an impact on your opinion?</b></p> <p>20 A. Having assistance from others during</p> <p>21 heavy lifting certainly would be helpful.</p> <p>22 However, I don't think whether he bent his knees</p> <p>23 while picking up something heavy, you know, doing</p> <p>24 a proper lifting technique, you know, over a</p>	<p style="text-align: right;">Page 61</p> <p><b>ergonomic assessment of the job was shown to be --</b></p> <p>A. So a nonmedical engineer came and</p> <p>assessed his job?</p> <p><b>Q. Do you understand what an ergonomist</b></p> <p><b>is?</b></p> <p>A. Is it a medical doctor?</p> <p><b>Q. Well, an ergonomist could be a medical</b></p> <p><b>doctor. But an ergonomist could be someone who</b></p> <p><b>studies jobs and the relationship --</b></p> <p>A. All right.</p> <p><b>Q. -- of how fitting the worker --</b></p> <p>A. So if a -- so if a non-medical</p> <p>personnel evaluated his job and made a</p> <p>recommendation regarding his development of a</p> <p>medical issue, I should take that for gospel?</p> <p><b>Q. You're asking me?</b></p> <p>A. It's not your deposition, I</p> <p>understand. But I'm trying to understand why I</p> <p>would change my medical opinion if a non-medical</p> <p>individual gave me medical advice regarding a</p> <p>patient. If a non-medical individual gave me an</p> <p>assessment, then I'm not going to necessarily take</p> <p>that for medical gospel.</p> <p><b>Q. Okay. But you'll take a lawyer's word</b></p>



<p style="text-align: right;">Page 62</p> <p>1 for it --</p> <p>2 MR. JOYCE: Objection.</p> <p>3 Q. (By Mr. Hall) -- is that correct?</p> <p>4 A. I'm hoping the lawyer's letter got</p> <p>5 this information from the patient --</p> <p>6 Q. Did you --</p> <p>7 A. -- or the client in this case.</p> <p>8 Q. Did you check on that?</p> <p>9 A. No.</p> <p>10 Q. Did you confirm any of this with Mr.</p> <p>11 Crowther?</p> <p>12 A. But I'm sure we could.</p> <p>13 Q. I'm asking if you did.</p> <p>14 A. No.</p> <p>15 Q. Okay. So my understanding is that</p> <p>16 you'll take the word of a lawyer, in a letter, who</p> <p>17 you've never met, over an ergonomist who studied</p> <p>18 the work --</p> <p>19 MR. JOYCE: Objection.</p> <p>20 Q. (By Mr. Hall) -- is that correct?</p> <p>21 A. Well, I think the job description</p> <p>22 should not be variable, no matter if an ergonomist</p> <p>23 or a lawyer or the patient told me. I don't know</p> <p>24 what the difference is. If someone tells me the</p>	<p style="text-align: right;">Page 64</p> <p>gathered from your opinion is that, in your</p> <p>opinion, Geoff's job as a track laborer and</p> <p>foreman aggravated and worsened his pre-existing</p> <p>osteoarthritis, is that correct?</p> <p>A. That's correct.</p> <p>Q. You're not here telling us that his</p> <p>job as a trackman caused the osteoarthritis,</p> <p>correct?</p> <p>A. That's correct.</p> <p>Q. And in your opinion, is Geoff disabled</p> <p>from working as a trackman, based upon what you --</p> <p>your understanding of what he does at the</p> <p>Railroad?</p> <p>A. If his description of his job is</p> <p>accurate, then yes.</p> <p>MR. JOYCE: Okay. That's all the</p> <p>questions I have.</p> <p>MR. HALL: You have the ability to</p> <p>read the transcript and make any corrections</p> <p>that might be necessary.</p> <p>THE WITNESS: Okay.</p> <p>MR. HALL: Or you can waive that</p> <p>right and basically believe that the court</p> <p>reporter has accurately taken down what</p>
<p style="text-align: right;">Page 63</p> <p>1 description, as long as it's accurate, it</p> <p>2 shouldn't make a difference.</p> <p>3 Q. Okay. And you'd agree that if it's</p> <p>4 not accurate --</p> <p>5 A. If it's not accurate, then yes, it</p> <p>6 wouldn't make a difference.</p> <p>7 Q. And in fact, it could invalidate your</p> <p>8 opinion?</p> <p>9 A. Yes. I was -- I would, you know,</p> <p>10 probably like to re-evaluate it, if it's not</p> <p>11 accurate and --</p> <p>12 Q. Okay.</p> <p>13 A. -- you know, it may or may not change</p> <p>14 my opinion, depending on how inaccurate it may be.</p> <p>15 Q. And as far as you sit here today,</p> <p>16 you've done -- you've not done anything to confirm</p> <p>17 whether or not the description that you were given</p> <p>18 was accurate, correct?</p> <p>19 A. That's correct.</p> <p>20 MR. HALL: Okay. I don't have any</p> <p>21 further questions.</p> <p>22 MR. JOYCE: Just real briefly.</p> <p>23 EXAMINATION</p> <p>24 Q. (By Mr. Joyce) Dr. Lehman, what I</p>	<p style="text-align: right;">Page 65</p> <p>you've said.</p> <p>THE WITNESS: Since I have a history</p> <p>of speaking way too fast, maybe it would be</p> <p>a good idea if I take a look at it.</p> <p>MR. HALL: Okay. And just so you</p> <p>know, when the transcript is sent to you,</p> <p>you have thirty days to read it and make any</p> <p>changes; and you'll be given an errata sheet</p> <p>to do that, okay? And, Tom, do you want to</p> <p>do that?</p> <p>MR. JOYCE: Yes. If you would, just</p> <p>send it to me and I'll send it to Dr.</p> <p>Lehman.</p> <p>MR. HALL: Okay. We're more than</p> <p>happy to do that, so --</p> <p>MR. JOYCE: That's fine.</p> <p>(Deposition concluded at 5:22 p.m.)</p>

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY - CIVIL DIVISION  
DOCKET NO. 02389

\*\*\*\*\*

GEOFFREY CROWTHER,  
Plaintiff,  
Vs.  
CONSOLIDATED RAIL CORPORATION  
and CSX TRANSPORTATION, INC.,  
Defendants.  
\*\*\*\*\*

I, ANDREW P. LEHMAN, M.D., do hereby certify  
under the pains and penalties of perjury, that the  
foregoing testimony is true and accurate, to the  
best of my knowledge and belief.

WITNESS MY HAND, this     day of     ,  
2008/2009.

\_\_\_\_\_  
ANDREW P. LEHMAN, M.D.

JPL

[illegible]